No. 84-776 (1)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

PHILIP S. CARCHMAN, ESQ.
MERCER COUNTY PROSECUTOR,

Petitioner,

v.

RICHARD NASH,

Respondent.

No. 84-835 (9)

STATE OF NEW JERSEY,
DEPARTMENT OF CORRECTIONS

Petitioner,

v.

RICHARD NASH,

Respondent.

BRIEF IN OPPOSITION TO THE PETITIONS FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT SUBMITTED BY THE MERCER COUNTY PROSECUTOR AND STATE OF NEW JERSEY, DEPARTMENT OF CORRECTIONS

JOSEPH H. RODRIGUEZ
Public Defender

LOIS DE JULIO
First Assistant Deputy Public Defender

JOHN BURKE III
Assistant Deputy Public Defender

20 Evergreen Place
East Orange, New Jersey 07018

Attorneys for Respondent

33 PP

No. 84-776

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

PHILIP S. CARCHMAN, ESQ.
MERCER COUNTY PROSECUTOR,

Petitioner,

v.

RICHARD NASH,

Respondent.

No. 84-835

STATE OF NEW JERSEY,
DEPARTMENT OF CORRECTIONS

Petitioner,

v.

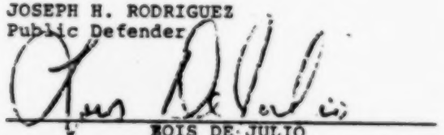
RICHARD NASH,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS
AND TO PROCEED ON TYPEWRITTEN PAPERS

The Respondent, Richard Nash, asks leave to file the attached Brief in Opposition to the Petitions for Writ of Certiorari from the decision of the United States Court of Appeals for the Third Circuit, without prepayment of costs, to proceed in forma pauperis pursuant to Rule 46, and to proceed on typewritten papers pursuant to Rule 47.3. Respondent has previously been found to qualify for the services of the Office of the Public Defender at every stage of the proceedings in the courts of the State of New Jersey. Respondent's affidavit in support of this motion is attached hereto.

JOSEPH H. RODRIGUEZ
Public Defender



LOIS DE JULIO
First Assistant Deputy Public Defender
Counsel of Record

JOHN BURKE III
Assistant Deputy Public Defender
Counsel for Respondent

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1984

No. 84-776

PHILIP S. CARCHMAN,

Mercer County Prosecutor,

Petitioner,

v.

RICHARD NASH,

Respondent.

No. 84-835

STATE OF NEW JERSEY,
Department of Corrections,

Petitioner,

v.

RICHARD NASH,

Respondent.

I, RICHARD NASH, being duly sworn according to law, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therfore, I state that because of my poverty I am unable to pay the costs of said case or to give security therfore; and that I believe I am entitled to the redress in this case.

I am presently employed by Colortyme T.V. Rentals, 2881 Mt. Ephrain Avenue, Camden, New Jersey at a weekly salary of $165.00. Within the past twelve months, I have not received any other income, interest, dividend or payment. The balances both of my checking and savings account contain less than the amount of $10.00. I do not own any real estate, stocks, bonds, notes, automobiles or other valuable property. My fiance, Ms. Jacqueline Kerlin, is dependent upon me for support.

During all of the proceedings below, I qualified for representation by the Public Defender of New Jersey. I represent that I am still qualified for representation by that office pursuant to its eligibility standards.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

RICHARD NASH

Subscribed and Sworn to before
me this 20 day of December 1984.

J. Stewart Hurd
Attorney at Law
State of New Jersey

QUESTIONS PRESENTED FOR REVIEW

1. Since the decision of the Third Circuit Court of Appeals is distinguishable from the decision of the Court of Appeals for the Ninth Circuit in Hopper v. United States Parole Commission, 702 F.2d 842 (1983), should this Court grant the writ of certiorari in the absence of a direct conflict between Federal Courts of Appeal?

2. Is it not premature to decide that there exists a question of national importance where there is no direct conflict with seven of the jurisdictions cited by the Petitioner and no indication that the decision of the Third Circuit disrupts the administration of the law?

3. Since the State treated Respondent's letters as a request for a final disposition and hearing under Article III of the IAD, was he not excused from strict compliance with the formal notice requirements of the Act?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE NOS

CASES CITED

TABLE OF AUTHORITIES

PAGE NOS

CASES CITED

STATUTES AND REGULATIONS CITED

TABLE OF AUTHORITIES

STATEMENT OF THE CASE

While serving a New Jersey sentence of probation, Richard Nash was arrested in Montgomery County Pennsylvania on June 13, 1978. Subsequently, on June 21, 1978, the Mercer County Probation Department of the State of New Jersey filed a detainer against Nash charging him with a violation of probation. On March 14, 1979, Nash was convicted of all Pennsylvania charges and, on July 13, 1979, sentenced to a minimum of 5 years and a maximum of 10 years to be served at the State Correctional Institution at Dallas, Pennsylvania.

On April 13, 1979, Nash wrote a letter to the Mercer County Prosecutor's Office requesting advice as to what he should do to dispose of the detainer filed against him. Although the letter did not specifically refer to the Interstate Agreement on Detainers, the request was clear. In a reply letter dated May 16, 1979, the Prosecutor's office claimed not to have jurisdiction over the matter and advised Mr. Nash to contact his New Jersey Probation Officer.

On May 17, 1979, relying upon this advice, Mr. Nash wrote a letter to the Mercer County Probation Office. On May 23, 1979 Probation Officer Robert A. Hughes responded. Mr. Nash was informed that his request for disposition of the charge had been conveyed to Judge A. Jerome Moore, J.S.C., and that Judge Moore had stated that no action would be taken by the State on the detainer until Mr. Nash had been sentenced. The letter advised Nash to contact the Probation Office after he was sentenced.

On July 20, 1979, seven days after he was sentenced, Nash wrote the Mercer County Probation Office and renewed his request for a final disposition of the charge. On August 3,

1979, Probation Officer Judith Giordano replied that a probation revocation hearing would be held in the court of the Honorable Richard J. S. Barlow, Jr. as soon as Mr. Nash was appointed a Public Defender.

No hearing having been scheduled, on November 5, 1979, Nash wrote to the Chief Probation Officer of Mercer County explicitly requesting final disposition of the probation violation charge on the basis of the Interstate Agreement on Detainers Act and stating that the Pennsylvania Bureau of Corrections had been asked to attach a certificate. A copy of this letter was sent to Judge George Y. Schoch, the Assignment Judge of the Superior Court of New Jersey, Mercer County. Judge Schoch referred Nash's letter to the Mercer County Prosecutor's Office with an attached note "suggesting" Mr. Nash was invoking the terms of the Interstate Agreement on Detainers.

On December 6, 1979, Nash executed Form II under the Interstate Agreement on Detainers formally requesting transfer to Mercer County to resolve the probation violation charge. This form was delivered to the Mercer County Prosecutor along with Form IV used under the Interstate Agreement on Detainers as an offer to deliver temporary custody of the prisoner to the Prosecutor.

On December 14, 1979, the Mercer County Prosecutor's Office delivered Form VI of the Interstate Agreement on Detainers to the State Correctional Institution at Dallas. The form authorized two agents of the Mercer County Prosecutor's Office to take custody of the prisoner on December 20, 1979. The Mercer County Officers arrived at Dallas on the appointed date, but were informed that Nash had

been temporarily transferred to the prison facility at Graterford on December 11, 1979. No attempt was made to take custody of Nash during his confinement at Graterford.

On February 28, 1980, after Nash had been returned to Dallas, Mercer County executed a new Form VI. The form designated March 10, 1980 as the date when Nash would be taken into custody. Nash refused to sign additional papers to effectuate his transfer to New Jersey.

On March 6, 1980, Nash filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of Pennsylvania seeking dismissal of the detainer. An amended petition was filed on December 9, 1980. On February 3, 1981, the District Court for the Middle District of Pennsylvania transferred the case to the United States District Court of the District of New Jersey. On June 23, 1981, the Honorable Dickinson R. Debevoise, U.S.D.N.J., ordered that Nash's federal action be stayed until he had exhausted State remedies.

On August 24 and 25, 1981, the Honorable Richard Barlow, Jr., J.S.C. held a hearing in which he denied Nash's motion to dismiss the detainer. Judge Barlow found that Nash's Pennsylvania convictions constituted a violation of probation and re-sentenced him to two consecutive terms of eighteen months each to be served in the Mercer County Detention Center. Nash appealed to the Appellate Division of the Superior Court of New Jersey on the ground that the State had failed to provide a hearing within the statutorily prescribed time period. The Appellate Division affirmed the judgment of conviction on June 22, 1981; a petition for certification was denied by the New Jersey Supreme Court on November 12, 1981.

On January 4, 1983, Judge Debevoise held a hearing on the matter at the United States Court at Philadelphia. The District Court had subject matter jurisdiction pursuant to 28 U.S.C. Section 2241 and 28 U.S.C. Section 2254. On March 7, 1983, the court issued an opinion dismissing the detainer lodged against Nash and nullifying his conviction of violation of probation. Nash v. Carchman, 558 F. Supp 641 (D.N.J. 1983). The court ruled that article III of the IAD is applicable to detainers based upon probation violation complaints, and that the State had violated Nash's rights.

The Mercer County Prosecutor appealed the decision of the District Court. During the pendency of the appeal, the State of New Jersey, Department of Corrections, moved to intervene on the ground that the opinion of the District Court invalidated one of its office policies. On June 29, 1983, the Court of Appeals granted the movant's request.

On July 10, 1984, the Third Circuit Court of Appeals affirmed the district court's ruling. The Third Circuit had jurisdiction to review the final judgment of the district court pursuant to 28 U.S.C. Section 1291. A petition for Rehearing and Suggestion for Rehearing En Banc was denied on August 27, 1984. The mandate was filed on September 4, 1984.

On November 5, 1984, Phillip S. Carchman, Mercer County Prosecutor, filed a petition for a writ of certiorari from the decision of the United States Court of Appeals for the Third Circuit. On November 20, 1984, the State of New Jersey, Department of Corrections, filed a separate petition.

REASONS FOR NOT GRANTING THE WRIT

POINT ONE

THE DECISION OF THE COURT OF APPEALS HAS NOT CREATED A CONFLICT IN THE INTERPRETATION OF THE INTERSTATE AGREEMENT ON DETAINERS.

The decision of the Court of Appeals is not in direct conflict with the decision of the Court of Appeals for the Ninth Circuit in Hopper v. United States Parole Commission, 702 F. 2d 842 (1983). Although the opinion is at odds with a small group of lower court cases, no question of national importance has yet arisen, nor has the administration of the law been disrupted. The request for review by this Court is premature and, in view of the eminently reasoned decision of the court below, unnecessary.

The Court of Appeals for the Third Circuit held that a detainer based upon a probation violation complaint is within the scope of the Interstate Agreement on Detainers. Nash v. Jeffes, 739 F.2d 878, 884 (3rd Cir. 1984).[1] In Hopper, the Court of Appeals for the Ninth Circuit held that a detainer based upon an "unadjudicated parole violation warrant" is not within the Act. Id. at 846. The two cases are not diametrically opposed as they are based upon distinctions between probation and parole.

Probation and parole are not interchangeable terms within the context of the IAD. Probation is exclusively a

---

1. In the petition of the Mercer County Prosecutor, the holding of the Court of Appeals is persistently misrepresented as applying to parole as well as to probation violation detainers.

judicial matter within the jurisdiction of the court, while parole is an administrative matter within the jurisdiction of an administrative body, the State Parole Board. See, N.J.S.A. 2C:45-1 et seq; N.J.S.A. 30:4-123 et seq. A detainer based upon a charge of probation violation is filed by the prosecutor in whose county the sentence of probation was imposed. A detainer based upon a charge of parole is filed by the State Parole Board. N.J.A.C. 10A:71-7.2(b). A revocation of probation is heard before the court which imposed the sentence of probation, while the revocation of parole is heard before the State Parole Board or a parole officer. See, N.J.S.A. 2C:45-4; N.J.S.A. 30:4-123.60 and N.J.A.C. 10A:71-7.12. Dispositional alternatives available to a court in the event of revocation are not available to the State Parole Board. Compare, N.J.S.A. 2C:45-3(b) with N.J.A.C. 10A:71-7.16.

These practical distinctions render the act eminently more suitable to a detainer based upon a probation violation complaint. Specifically, the notice requirements of Article III serve to inform the correct authorities of the prisoner's request for a hearing, and resolution of the charge accomplishes the overall aims to be achieved by the Act. The same effect is not obtained with an application of the IAD to a parole violation detainer.

Article III requires a prisoner to deliver his demand for a final disposition of the charge underlying the detainer to "the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction." N.J.S.A. 2A:159A-3(a).

Although this notice requirement informs those with jurisdiction over a probation violation complaint of the request for final disposition, it does not do so for a parole violation complaint. The Court of Appeals noted:

> In the probation violation context, the notice of the prosecutor and the judge required by Article III places the appropriate officials on notice of the prisoner's request for adjudication under the IAD. We note that if this were a parole violation rather than a probation violation, the notice required by the IAD might not be appropriate to inform the state officials with jurisdiction over the outstanding charge.

Nash v. Jeffes, 739 F.2d 878, 883, n.11 (3rd Cir. 1984) Because the operative provisions of the IAD can be so readily applied to dispose of detainers based on probation violations, the Court concluded that the legislature must have intended the act to apply.

The IAD is designed to alleviate the adverse consequences engendered by detainers which block a prisoner's access to rehabilitative programs. L. Abramson, Criminal Detainers, at p. 93 (1979); Note, Convictions - The Right To A Speedy Trial And The New Detainer Statutes, 18 Rutgers L. Rev.828, 832 (1974). Restrictions are placed upon inmates against whom a detainer is lodged under the assumption that they pose a greater escape risk than other inmates since they face the possibility of serving a future sentence of unknown duration. Note, Detainers And The Correctional Process, 4 Wash. U.L.Q. 417, 419 (1966).[2] The uncertainty surrounding

2. These restrictions are placed upon inmates without regard to the nature of the charge underlying the detainer. 4 Wash. U.L.Q. 417,419, supra.

the future of a prisoner against whom a detainer is lodged prevents prison officials from designing an effective program of rehabilitative treatment. Id. at 421 and 422. Resolution of the charge removes the restrictions placed upon the inmate, since the terms of the prisoner's future are made certain. Because a greater degree of uncertainty is cast over the future of a prisoner by an unresolved probation violation complaint, the aim of the legislation is more effectively accomplished when the act is applied to that kind of detainer.

At a revocation hearing, a court must first determine whether the terms of probation were violated. Although conviction of another crime raises a presumption of violation, the court is not required to revoke probation. N.J.S.A. 2C:45-3(4). As one commentator has noted:

> there is a possibility of prejudice where the new conviction is for a minor offense that may not warrant revocation, and delay complicates resolution of the revocation issue. L. Abramson, Criminal Detainers, at 86 (1979).

In the event a court decides to revoke probation, it is empowered to impose any sentence it could have imposed upon the original conviction, or to continue probation. Application of White, 18 N.J. 449, 114 A.2d 261 (1955). Any sentence imposed may be ordered to run either concurrently or consecutively to the out-of-state sentence the prisoner is then serving. Out of the total range of dispositions that may be imposed, many may serve to clarify the future of the prisoner and obviate the restrictions placed upon him by the detainer. When the complaint is based upon a charge of technical, non-compliance with the terms of probation, the early revocation hearing enables the prisoner to

attack the charge with fresh evidence. Nash v. Jeffes, 739 F.2d. 878, (3rd Cir. 1984).[3] Thus, petitioner's "fundamental assumption" that there is no interest in speedy resolution of probation violation detainers is erroneous.[4]

Not as much is at stake for the prisoner at the parole revocation hearing. A lesser array of dispositional alternatives restricts the discretion of the Parole Board N.J.A.C. 10A:71-7.16. The Board can only determine whether to run the balance of the sentence, for which parole is revoked, either concurrently or consecutively to the intervening out-of-state sentence. In as much as the decision of the Parole Board is less likely to produce a result that would lift the restrictions imposed upon the inmate by the detainer, the aims of the IAD are not as well accomplished.

In Hopper, the Court of Appeals for the Ninth Circuit ruled that the IAD is not applicable to parole violation complaints. The decision rested upon implicitly recognized distinctions between parole and probation violation complaints. Since entirely different implications are raised by each in the context of the IAD, the decision of the Ninth

---

3. Detainers of this sort are not uncommonly placed. See, e.g. Padilla v. State of Arkansas, infra. The petitioner's reliance upon Padilla ironically disproves its thesis that a detainer based upon a technical violation is likely to be rare.

4. Since there is no mechanism by which to apply the sentence on the probation violation retroactively, if the IAD is held not to apply, a judge would never be able to impose concurrent sentences and the prisoner would be denied the ensuing benefit.

Circuit is not in direct conflict with the decision of the Third Circuit Court of Appeals.

Three State Supreme Courts, Padilla v. Arkansas, 279 Ark 100, 648 S.W. 2d 797 (Sup. Ct. 1983); State v. Knowles, 275 S.C. 312, 270 S.E. 2d 133 (S.C. Sup. Ct. 1980); Suggs v. Hopper, 234 Ga. 242, 215 S.E. 2d 246 (Ga. Sup. Ct. 1975); and five State Appellate Courts, Irby v. State of Missouri, 427 So. 2d 367 (Fla. App. 1983), People ex rel. Capalongo v. Howard, 87 App. Div. 242, 453 N.Y.S. 2d. 45 (N.Y. App. Div. 1982); People v. Jackson, 626 P. 2d 723 (Colo. App. Ct. 1981); Blackwell v. State, 546 S.W. 2d 828 (Tenn. Crim. App. 1976); People v. Batalias, 35 App. Div. 740, 316 N.Y.S. 2d 245 (N.Y. App. Div. 1970), have found that a probation violation complaint is not included within the scope of the IAD.[5] None of these courts examined the legislative history of the IAD or supported their conclusions with persuasive analysis. One State Appellate Court and the Federal District Court below, however, have found that such a complaint is within the scope of the Act. Nash v. Carchman, 558 F.Supp. 641 (D.N.J. 1983); Gaddy v. Turner, 376 So.2d. 1225 (Fla. App. 1979), rev'd, Irby v. State of Missouri,

---

5. The petitioner falsely augments the magnitude of the conflict by reference to cases dealing with parole matters. See , Hernandez v. United States, 527 F. Supp 83 (W.D. Okla. 1981), Sable v. Ohio, 439 F. Supp. 905 (W.D. Okla. 1977), Cart v. DeRobertis, 117 Ill. App. 3d 587, 72 Ill. Dec. 848, 453 N.E. 2d 153 (Ill. App. 1983); Maggard v. Wainwright, 411 So. 2d 200 (Fla. App. 1982); Wainwright v. Evans, 403 So. 2d 1123 (Fla. App. 1981); Buchanan v. Michigan Department of Corrections, 50 Mic. App. 1, 212 N.W. 2d 745 (Mich. Ct. App. 1973). The petitioner's argument falsely presumes that the Third Circuit decision applies to parole violation detainers, as well as to probation violation complaints, which it clearly does not. The split of decision that does exist between the Third Circuit and eight state courts is not sufficiently serious to warrant intervention by this Court.

supra. The Court of Appeals rested its decision upon the cogent analysis of the District Court remarking that:

> Although the authority on the other side is entitled to considerable weight, the strength of the district court's analysis far exceeds that of the opinions reaching the opposite result.
> Nash v. Jeffes, 739 F.2d 878, 881 (1984).

The Court of Appeals carefully analyzed the legislative history of the act and also weighed the administrative burdens and costs its decision would impose upon the State. The Court found that the State's interests in minimizing costs did not outweigh the prisoner's interest in rehabilitation. Nash v. Jeffes, supra at 883.

At this time, it is premature to decide whether the decision of the Third Circuit will be disruptive of the administration of the Interstate Agreement on Detainers. The decision has accorded rights to prisoners under the IAD that were previously unrecognized. Technically, the decision is binding only upon authorities within the domain of the Third Circuit which have lodged detainers against out-of-state prisoners. This is not to suggest, however, that the opinion will not have influence elsewhere. Rather, it can be presumed that jurisdictions not presently in accord with the opinion of the Third Circuit will follow the decision, given its great precedential weight. Cuyler v. Adams, 449 U.S. 433 101 S. Ct. 703 (1981). Additionally, as this Court has noted in Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, n.5 at 782, 1760 (1973), some amount of disruption inevitably attends any new ruling. In any event, the disruption would be minor because the decision is limited to probation violation complaints which can be readily handled

under the existing operative mechanisms of the act. Until other courts of equivalent jurisdiction rule otherwise, or until courts of lower jurisdiction indicate a refusal to follow the ruling of the Third Circuit, the claim that the decision of the Court of Appeals has disrupted the uniform administration of the law is premature.

POINT TWO

THE COURT OF APPEALS CORRECTLY INTERPRETED THE LEGISLATIVE HISTORY OF THE INTERSTATE AGREEMENT ON DETAINERS.

Relying upon the legislative history of the IAD, the Court of Appeals correctly interpreted the phrase "untried indictment, information or complaint" as used in Article III to include detainers based upon probation violation complaints.

In 1948, the Joint Committee on Detainers issued a report dealing with problems attending the use of detainers and recommended a set of guiding principles. See, Council of State Governments, Suggested State Legislation for 1956. United States v. Mauro, 436 U.S. 340, 98 S.Ct. 1834 (1978). Under the auspices of the Council of State Governments, the committee drafted several proposals concerning detainers. In 1957, the final draft was published as part of the Council's Suggested State Legislation Program. See Council of State Governments, Suggested State Legislation for 1957. Currently, the Interstate Agreement on Detainers has been adopted by forty-eight states, the District of Columbia and the Federal Government. Note, Federal Habeas Corpus Review of Nonconstitutional Errors: The Cognizability of Violations of the Interstate Agreement on Detainers, 83 Colum L.Rev 975, 975 n.1 (1983).

The Act was principally designed to alleviate the adverse effects of detainers upon prisoner's prospects of rehabilitation. Note, Convictions The Right to a Speedy Trial and the New Detainer Statutes, 18 Rutgers L. Rev. 828, 832 (1964). In 1956, the Council of State Governments

succinctly expressed the nature of this problem:

> "The prison administrator is thwarted in his efforts toward rehabilitation. The inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program. He often must be kept in close custody, which bars him from treatment such as trustyships, moderations of custody and opportunity for transfer to farms and work camps. In many jurisdictions he is not eligible for parole; there is little hope for his release after an optimum period of training and treatment, when he is ready for return to society with an excellent possibility that he will not offend again. Instead, he often becomes embittered with continued institutionalization and the objective of the correctional system is defeated."

Council of State Governments, Suggested State Legislation for 1956, p. 60.

That Article III of the IAD was meant to comprehend and apply to all detainers, irrespective of the charges that underlie them, is obvious from the comments made by the Joint Committee in its "statement of aims" which included the following:

> I. Every effort should be made to accomplish the disposition of detainers as promptly as possible. This is desirable whether the detainer has been filed against an individual who has not yet been imprisoned or against an inmate of a penal institution. Prompt disposition of detainers is a proper goal whether the detainer has been filed by a local prosecutor, a state prison, a parole board, or a federal official. Detainers lodged on suspicion should not be p rmitted to linger without action. (Emphasis added.)
>
> III. Prison and parole authorities should take prompt action to settle detainers which have been filed by them. Prison officials and parole boards recognize that detainers create serious problems with respect to prisoners under their jurisdiction. Therefore, when such authorities file detainers against prisoners in other jurisdictions, they should cooperate fully to effect a prompt settlement of all detainers. They should promptly give notice as to whether they insist that the prisoner be returned at the end of his present sentence, or whether they will agree to a concurrent parole. Every effort should be made to cooperate in planning effective rehabilitation programs for the prisoner.

See, Council of State Governments, Suggested State Legislation for 1956, at 61. No distinction was made between detainers based upon probation violation complaints and those based upon other charges precisely because the drafters recognized the effects of both were equally pernicious.

In 1970, the Federal Government adopted the IAD. The federal legislative history echoes the same concern for prisoner's rights as the original legislative history of the Council of State Governments. In describing the need for the legislation, the Senate stated:

> The Attorney General has advised the committee that a prisoner who has had a detainer lodged against him is seriously disadvantaged by such action. He is in custody and therefore in no position to seek witnesses or to preserve his defense. He must often be kept in close custody and is ineligible for desirable work assignments. What is more, when detainers are filed against a prisoner he sometimes loses interest in institutional opportunities because he must serve his sentence without knowing what additional sentences may lie before him, or when, if ever, he will be in a position to employ the education and skills he may be developing. Although a majority of detainers filed by States are withdrawn near the conclusion of the Federal sentence, the damage to the rehabilitation program has been done because the institution staff has not had sufficient time to develop a sound pre-release program.

Senate Rep. No. 91-1356, 91st Cong., 2nd. Sess. (1970), U.S.

Code Cong. & Ad. News 4864, 4866. In addition to affording prisoners redress to a specific complaint, Congress also intended to revamp the rehabilitation policies of the Federal Penal System.

During passage of H.R. Bill 6951 in the House of Representatives, Representative Richard H. Poff from the State of Virginia remarked:

> ...If a defendant is uncertain as to whether he will have to serve another jail term, he is less likely to have the motivation to become successfully rehabilitated. This latter consideration is especially important in view of the fact that the basic purpose of the entire penal system is to prepare its inmates to reenter society as law abiding citizens. (emphasis added)
> Congressional Record: H.R. 6951, 91st Cong., 2nd Sess., 116 Cong. Record, 13997, 14000 (1970)

Representative Poff concluded "...in view of these considerations, I feel that the Interstate Agreement on Detainers benefits both defendant and prosecutor, as well as society generally." Id. at 14000.

Drawing upon the clear message of the legislative history, the Court of Appeals concluded that "the drafters of Article III were concerned with the need to settle outstanding charges against prisoners in order to enable the prisoners to participate in rehabilitation programs." Nash v. Jeffes, 739 F.2d 878, 882 (3d Cir. 1984). Support for this conclusion not only rests upon the legislative history, but also upon the legislative mandate to "interpret the terms of the act broadly," N.J.S.A. 2A:159A-9, the directive that the act shall apply to "all outstanding charges" against the prisoner, N.J.S.A. 2A:159A-1, and the broad policy objectives to be accomplished. For these

reasons, the Court stated, "We decline to adopt a technical interpretation of the relevant language of Article III." Nash v. Jeffes, supra, at 883.[6] Indeed, the legislative history instructs that the phrase was intended not to limit the scope of the Act but to make certain the detainer is supported by a minimally valid charge. Washington Note, 4 Wash. U.L.Q. 417, 417-418.

"Technical" interpretations of the terms of the IAD that result in a circumvention of the Act's purposes have been uniformly rejected. United States v. Mauro, 436 U.S. 340, 98 S. Ct. 1834 (1978); Tinghitella v. State of California, 718 F.2d 308 (9th Cir. 1983). In Mauro, this Court ruled a writ of habeas corpus ad prosequendum is equivalent to a "written request for custody of the prisoner" under the terms of the Act, in spite of the technical nuances of the Federal Court instrument. Id. at 361, 1848. The Court rejected the technical interpretation offered because it would skirt the aims of the Act. In Tinghitella, the Court of Appeals for the Ninth Circuit held that the term "trial"

---

6. The petitioner claims that the court misread the legislative history by misplaced emphasis upon the following commentary:

> Such detainers may be placed by various authorities under varying conditions, for example, when an escaped prisoner or a parolee commits a new crime and is imprisoned in another state. (Council of State Governments Suggested State Legislation for 1957 at 74 (1956)). (Mercer County Prosecutor's Petition at 13-14; State of New Jersey Petition at 7.)

The petitioner's claim is not well-founded. First, the Court did not rely exclusively upon this commentary but upon the complete text of the historic material. Secondly, the definition given by the Council is not merely descriptive, as the petitioner suggests, but indicative of the scope the Act was intended to have.

encompassed sentencing as well as trial. In that case, the petitioner, after having been convicted of assault, absconded the State of California before he was sentenced. While imprisoned in Texas, he filed a request under the IAD to be returned to California for sentencing. California argued that Article III of the IAD was inapplicable because the detainer was not based upon an "untried indictment." The Court observed:

> The cases do not address the fact that the term "trial" in the speedy trial clause of the Sixth Amendment to the United States Constitution has been construed to include sentencing. Nor do they gainsay that the central policy foundations of the IAD support a broad construction of the term "trial", or that the IAD itself provides that it "shall be liberally construed to as to effectuate its purposes. (Cases and footnotes omitted). Id. at 311.

In the present case, the Court of Appeals rejected the technical interpretation offered by the State because it would have circumvented the aim of the Act to alleviate the adverse consequences of detainers.

The Act need not be amended to give it its intended meaning. One state, Kentucky, has amended its statute to apply to detainers based upon violations of probation and parole. Kentucky Revised Statutes Sec. 440.445. The Amendment provides in pertinent part:

> All provisions and procedures of KRS 440.450 shall be construed to apply to any and all detainers based on unheard, undisposed of, or unresolved affidavits and warrants charging violations of the terms of probation and parole. KRS 440.455(2).

The Amendment, however, does not indicate a short-coming in the original statement of the law, but rather reflects a

declaration of original intent. As one court has observed:

> "[The Kentucky Amendment] is simply declaratory of the intent and effect of the language of the uniform law ... which encompasses detainers based on complaints generally as well as indictment or information." Maggard v. Wainwright, 411 So. 2d 200, 203 (Fla. App. 1982), (dissenting opinion of Justice J. Wentworth).

Because the language of the statute is sufficiently definitive of the scope of the Act, legislative amendment is not needed.

POINT III

THE STATE OF NEW JERSEY FAILED TO COMPLY WITH THE PROVISIONS OF ARTICLE III OF THE INTERSTATE ARGEEMENT ON DETAINERS

Article III provides that a prisoner must be brought to trial within 180 days:

> ...after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction, written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint.

N.J.S.A. 2A:159A-3(a).

The notice provisions require that the prisoner file a written notice and request for final disposition of the detainer with the Prosecutor and Court. The written request must be accompanied by a certificate of the official having custody of the prisoner. N.J.S.A. 2A:159A-3(a). The certificate shall state "the term of the commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, time of parole eligibility of the prisoner, and any decisions of the State Parole agency." N.J.S.A. 2A:159A-3(a).

In this case, Respondent Nash did not strictly comply with the notice requirements of the statute. Although his written notice and request for final disposition were delivered to the prosecutor and appropriate court, they were not accompanied by a certificate from the official having custody of him at Dallas Prison in Pennslyvania.

The Court of Appeals excused his failure to strictly comply with the notice requirements because the failure was

directly attributable to "misleading information" given him by the State of New Jersey. Nash v. Jeffes, 739 F.3d 878, 884 (3rd Cir. 1984). Where the failure to strictly comply is the fault of one the jurisdictions involved rather than the prisoner, technical compliance is excused. See, Schofs v. Warden, FCI, Livington, 509 F. Supp 78, 82 (E.D.Ky. 1981); United States v. Hutchins, 489 F. Supp. 710, 714-15 (N.D. Ind. 1980). See also Pittman v. State, 301 A.2d 509 (Del. 1973), State v. Wells, 186 N.J. Super 497, 453 A.2d 236 (App. Div. 1982).

Respondent Nash wrote a series of letters to the Mercer County Prosecutor's office and to Judge Moore during the period April 1979 through August 1979 requesting the State to provide a probation revocation hearing. Nash v. Carchman, 558 F. Supp. 641, 647 (D.N.J. 1983). The Court of Appeals found that "Nash's letters were being treated as a request for disposition of the probation violation charge," by the State of New Jersey. Nash v. Jeffes, 739 F.2d 878, 875 (1984). Thus, Nash was found to have complied with the first prong of the notice requirement.

In a letter dated August 3, 1979, Mercer County officials advised Mr. Nash that:

> "As soon as you are assigned a Public Defender in New Jersey, there will be a hearing in the court of the Honorable Richard S. Barlow, Jr."

Nash v. Carchman, 558 F. Supp. 641, 647 (D.N.J. 1983). On the basis of this letter, the court concluded that "Nash was justified in taking no further action," and that the 180 day period for adjudication of the probation violation charge began running on August 3, 1979." Nash v. Jeffes, supra,at 885.

Although Respondent Nash complied with the formal notice requirements on December 6, 1979 by providing the State of New Jersey with the standard forms ordinarily used to make a request, by that time, as the District Court had noted, he had been "led to believe that . . . an effective demand for final disposition of the pending charges " had been made by the representation made to him in the August 3 letter. Nash v. Jeffes, supra, at 885.

The State of New Jersey failed to provide a hearing within the time period prescribed by the statute. Although the State had arranged for a transfer of custody to take place on December 20, 1979 at Dallas Prison, the transfer never took place because Mr. Nash was confined at Graterford Prison. The State's insinuation that Mr. Nash should be held accountable for the bungled transfer attempt is absurd. Regardless of the effort the State made to take custody of the prisoner, the State did not provide a hearing within the allowable time period. N.J.S.A. 2A:159A-3(a) and 3(d).

CONCLUSION

For the foregoing reasons, Respondent respectfully requests the Court to deny the petitions for writ of certiorari.

Respectfully submitted,
JOSEPH H. RODRIGUEZ
Public Defender

LOIS DE JULIO
First Assistant Deputy
Public Defender

Counsel of Record

JOHN BURKE III
Assistant Deputy
Public Defender

Counsel for Respondent